

FILED IN THE
U.S. DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

Aug 23, 2021

SEAN F. MCAVOY, CLERK

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

BOBBY LAYTHEN BINFORD,

Plaintiff,

v.

TEDDIE¹ ARMSTRONG and SHAWN
GANNON,
Defendants.

No. 4:19-CV-05280-SAB

ORDER DISMISSING ACTION

Before the Court is Plaintiff's Second Amended Complaint pursuant to 42 U.S.C. § 1983. ECF No. 30. On July 20, 2021, following remand from the Ninth Circuit Court of Appeals, the Court granted Plaintiff a second opportunity to amend or voluntarily dismiss. ECF No. 29. Plaintiff, a prisoner at the Washington

¹ Plaintiff spells this person's name as both Teddie and Teddi and the initials provided after the name are sometimes APRN, APNR and ARNP. ECF No. 30 at 1, 3 and 5. This person is identified as a Nurse Practitioner responsible for prescribing psychiatric medications. Defendant Shawn Gannon, RN, is identified as a registered nurse who is responsible for dispensing medications to prisoners. *Id.* at 5.

ORDER DISMISSING ACTION -- 1

1 State Penitentiary (“WSP”), is proceeding *pro se* and *in forma pauperis*;
2 Defendants have not been served.

3 Plaintiff seeks injunctive relief and \$300,000.00 in monetary damages from
4 each Defendant for alleged Eighth, Eleventh, and Fourteenth Amendment
5 violations. ECF No. 30 at 15. Elsewhere, Plaintiff states that he is seeking
6 \$2,000,000.00 in monetary damages against each Defendant and declaratory relief
7 for alleged violations of his Eighth and Fourteenth Amendment rights. *Id.* at 5. He
8 claims that Defendants Armstrong and Gannon denied him “treatment for anti-
9 axority mental health disorder & dispense his psychiatric medication” without
10 providing “postdeprivation procedures.” ECF No. 30 at 5.

11 Although granted several opportunities to present facts showing that
12 Defendants were deliberately indifferent to his serious mental health issues,
13 Plaintiff has failed to do so. Liberally construing the Second Amended Complaint²
14 in the light most favorable to Plaintiff, the Court finds that Plaintiff has failed to
15 cure the deficiencies of his prior complaints and that he has failed to state a claim
16 upon which relief may be granted.

17 ELEVENTH AMENDMENT

18 Plaintiff asks the Court to find that Defendants violated his “11th
19 Amendment rights to the United States Constitution.” ECF No. 30 at 15. The
20 Eleventh Amendment provides: “The Judicial power of the United States shall not
21 be construed to extend to any suit in law or equity, commenced or prosecuted
22 against one of the United States by Citizens of another State, or by Citizens or
23 Subjects of any Foreign State.” U.S. Const. amend. XI. This provision involves the
24 sovereign immunity of states. The Court cannot discern how the identified

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26 ² While this document is labeled Second Amended Complaint, it is the fourth
27 complaint filed in this action. *See* ECF Nos. 1, 14, 27 and 30.
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1 Defendants could have violated the Eleventh Amendment. Therefore, Plaintiff's
2 request that this Court find a violation of the Eleventh Amendment is denied.

3 **FOURTEENTH AMENDMENT**

4 The medical care that a prisoner receives is evaluated under the Eighth
5 Amendment of the U.S. Constitution. *See Helling v. McKinney*, 509 U.S. 25, 31
6 (1993). (“[T]he treatment a prisoner receives in prison and the conditions under
7 which he is confined are subject to scrutiny under the Eighth Amendment.”). To
8 the extent Plaintiff is asserting an entitlement to “postdeprivation processes” under
9 the Fourteenth Amendment regarding the medical treatment he received, this
10 assertion has no basis in law or fact. Plaintiff has failed to state any facts
11 supporting a Fourteenth Amendment violation. *See Sandin v. Conner*, 515 U.S.
12 472, 483–84 (1995).

13 **PLAINTIFF’S ALLEGATIONS**

14 In Count I, Plaintiff claims that Defendant Armstrong was deliberately
15 indifferent to his serious medical need in violation of the Eighth and Fourteenth
16 Amendments to the U.S. Constitution. ECF No. 30 at 4. Plaintiff claims that he
17 suffers from Bipolar disorder I and that, between 2011 and 2019, Dr. Grub—who
18 is not named as a Defendant to this action—treated him for this condition. *Id.* at 6.
19 Plaintiff asserts that the “CRC Committee,” presumably the Care Review
20 Committee, approved the treatment. *Id.*

21 Plaintiff states that when Dr. Grub’s contract ran out, Plaintiff was re-
22 assigned to Defendant Armstrong’s case load. ECF No. 30 at 6. Plaintiff states that
23 during a January/February 2019 mental health appointment, Defendant Armstrong
24 “signed off on all medications and treatment” for him and continued to “sign off”
25 on the prior physician’s treatment plan until July 8, 2019. *Id.*

26 Plaintiff asserts that on July 8, 2019, Defendant Armstrong “denied [him]
27 any treatment for bipolar disorder I.” ECF No. 30 at 6. Plaintiff states that he
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1 described his bipolar symptoms to Defendant Armstrong, which included the
2 following: interference with his ability to follow simple directions; lack of sleep;
3 hearing voices; difficulty paying attention; lack of motivation; irritability and
4 intolerance; inability to interact with others; high anxiety and energy inhibiting
5 ability to sit still; “dreams of death and dieing [sic]”; and “thoughts of suicide but
6 not presently.” ECF No. 30 at 6. Plaintiff complains that Defendant Armstrong
7 advised him that she would not be prescribing the same treatment as Dr. Grub—
8 and, when Plaintiff argued that she had been continuing the treatment already
9 approved by the CRC, she told Plaintiff that she would not approve the treatment
10 plan. *Id.* Plaintiff avers that when he asked, “What am I cured then?” Defendant
11 Armstrong stated that she was not treating him for bipolar and ordered Plaintiff to
12 leave her office. ECF No. 30 at 6. Plaintiff states that as he was leaving, Defendant
13 Armstrong issued another directive to leave, and he stated, “I only want to be
14 treated for my bipolarism.” *Id.*

15 Although Plaintiff describes the symptoms that he attributes to Bipolar
16 Disorder I, ECF No. 30 at 6, he presents no facts showing when and if he was
17 diagnosed with Bipolar Disorder I. Indeed, the only document attached to the
18 Second Amended Complaint containing any reference to Bipolar Disorder lists it
19 under “Axis 1” and modifies it as “unspecified.” ECF No. 30-1 at 8. This
20 document is a Multidisciplinary Team Care Review from 2001 indicating that
21 Plaintiff was sent to the WSP from the Airway Heights Corrections Center more
22 than 20 years ago to prevent self-harm and because he was suspected of planning
23 an escape. *Id.* Plaintiff asserts throughout his Second Amended Complaint that
24 Defendant Armstrong provided no medication to treat his bipolar disorder. ECF
25 No. 30 at 6–7.

26 Plaintiff states that by July 8, 2019, Defendant Armstrong had interviewed
27 him for a total of two hours, conducted no tests, and had “only the records before
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1 her.” *Id.* at 6. Plaintiff declares that he had informed Defendant Armstrong during
2 unspecified mental health appointments that a Medical Supervisor “documented in
3 [Plaintiff’s] chart as a standing order not to prescribe [Plaintiff] the class of drugs
4 known as psychotropic & antipsychotic.” *Id.* at 6–7.

5 Plaintiff complains that Defendant Armstrong prescribed these types of
6 drugs “at leas [sic] three times between July 8, 2018 to June 10, 2020[,]” “despite
7 being aware of her supervisors [sic] Order not to because they cause suicide and or
8 Violent thought reactions from plaintiff.” *Id.* at 7. Plaintiff states that he was told
9 that “the prescription was not the same kinds but in fact they were,” and this
10 resulted in “fights and thought of suicide, aggression with other inmates and
11 mental anguish caused by the effects of plaintiff’s mind fighting the medications
12 perscrible [sic] by Defendant Armstrong” *Id.*

13 Plaintiff does not specify when these medications were prescribed or the
14 circumstances surrounding the administration of these drugs, nor does he explain
15 what harm he suffered on these three occasions over a nearly two-year span. He
16 makes no allegation that Defendant Armstrong denied him treatment for any
17 resulting aggression or asserted suicidal ideation. Rather he refers the Court to
18 attached Health Services Kites. ECF No. 30 at 7. A review of these attached Health
19 Services Kites reveals no facts supporting a claim of deliberate indifference to
20 Plaintiff’s serious mental health needs. *See* ECF No. 30-1 at 2–4, 9–12.

21 Rather, they reveal that in August 2019, Defendant Armstrong scheduled
22 Plaintiff to be seen by a psychiatric provider after discontinuing Clonidine on an
23 “as-needed” basis due to the needs of the facility and recent findings concerning
24 prescribing the medication in that manner. ECF No. 30-1 at 2. In November 2019,
25 Defendant Armstrong addressed Plaintiff’s failure to attend a scheduled
26 appointment, advised him of a change of the dosage of Clonidine, warned him that
27 medications may be discontinued if he did not attend scheduled appointments, and
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1 advised that his participation in mental health evaluations and follow-up care was
2 necessary for the continued prescription of psychotropic medication. *Id.* at 4.

3 In March 2020, Defendant Armstrong discontinued oxcarbazepine at
4 Plaintiff's request. *Id.* at 11. In June 2020, Defendant Armstrong consulted with
5 the supervisory clinician at Plaintiff's request and offered Plaintiff the option of
6 treatment with a particular medication and indicated that a routine appointment
7 would be scheduled if Plaintiff did not respond. *Id.* at 3. The Court can infer no
8 deliberate indifference to serious medical needs from these responses.

9 Another Health Service Kite is difficult to read but appears to concern
10 Plaintiff's request for treatment for broken ribs in September 2019, with a response
11 that "[t]he provider has ordered imaging" ECF No. 30-1 at 9. Plaintiff does
12 not identify who his provider was while he was in the IMU in September 2019.
13 ECF No. 30 at 11. The Mental Health box is notably left unchecked. ECF No. 30-1
14 at 9. The next Health Service Kite is dated September 30, 2019, and shows that x-
15 rays were taken, revealing a rib fracture, and that a five-day prescription for pain
16 medication was ordered, but advising Plaintiff the pain would "likely be longer as
17 these take a month or more to heal." *Id.* at 10. These kites were neither addressed
18 to Defendant Armstrong, nor responded to by her. Therefore, the Court cannot
19 infer that Defendant Armstrong was involved in the care of Plaintiff's ribs in 2019.

20 The last Health Services Kite is Plaintiff's September 9, 2019 request for an
21 appointment with Dr. Grubb.³ A Psych Associate named E. Erbenich responded on
22 September 23, 2019, advising Plaintiff that "this message" was forwarded to
23 Plaintiff's "assigned therapist to address." ECF No. 30-1 at 12. Again, this kite is
24 neither addressed to Defendant Armstrong, nor responded to by her. For these

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26 ³ Plaintiff's spelling of names is not consistent. Earlier, he spelled this physician's
27 name as "Grub."
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1 reasons and because Defendant Armstrong had already advised Plaintiff that she
2 did not provide coverage in the IMU, *id.* at 2, the Court cannot infer that Defendant
3 Armstrong was involved in Plaintiff's psychiatric care in September 2019.

4 In reference to his Health Services Kites, Plaintiff states, "I think this was
5 done for malace [sic] by her expermental [sic] prescribing [sic] drugs and not
6 telling me they were a class of drugs the supervisor ordered for providers not to
7 administer Plaintiff." ECF No. 30 at 7. Plaintiff presents no facts from which the
8 Court could infer that experimenting with treatments to ascertain what is presently
9 effective and tolerated is medically unacceptable. Plaintiff admits that Defendant
10 Armstrong has discontinued medications when he has asserted adverse side effects.
11 *See* ECF No. 30 at 8 and ECF No.30-1 at 11. Plaintiff presents no facts from which
12 the Court could infer that Defendant Armstrong maliciously prescribed
13 medications. Plaintiff's speculation is insufficient to state a constitutional claim.

14 Plaintiff complains that unspecified medications were not prescribed for his
15 bipolar condition, although he was "led to believe" that they were for treatment of
16 his bipolar condition between 2018 and August 1, 2021. ECF No. 30 at 7. Plaintiff
17 asserts that Defendant Armstrong provided no medication for his bipolar condition.
18 *Id.* Plaintiff presents no facts indicating that a medication was medically necessary
19 to treat his bipolar condition.

20 Plaintiff states that in September 2019, he was "not getting along with
21 others" and "had broken [his] ribs." ECF No. 30 at 7. He avers that in response to
22 his Health Services Kite complaining of the pain in his ribs on September 26,
23 2019, he was told, "[t]he provider has ordered imagry [sic] and will move forward
24 with treatment after images have been obtained if necessary." *Id.* Plaintiff does not
25 identify who his provider was in September 2019, but he complains that he did not
26 receive an interview for the "cause," presumably his inability to get along with
27 others. *Id.* Plaintiff makes no assertion that he specifically sought mental health
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1 treatment at that time and that an identified Defendant denied him mental health
2 treatment.

3 Plaintiff indicates that on September 29, 2019, he was advised that x-rays
4 revealed a rib fracture, pain medication had been ordered, and the fracture would
5 likely take more than a month to heal. ECF No. 3 at 7. Plaintiff makes no
6 allegation that he was denied the prescribed pain medication or if so, by whom.

7 Rather, Plaintiff states, “PLAINTIFF was never seen in person to answer
8 how or examined in person or follow-up on this injury or cause. Due to the side
9 effects of bipolar disorder I – as the direct cause of no treatment and confusion and
10 fear as well as all the other symptoms of non-treatment, was a direct result of
11 Defendants [sic] lack of or mistreatment of PLAINTIFF’s indifference to serious
12 mental health medical needs. This is not an isolated incident as plaintiff further,
13 described a total lack of being able to function with his cell partner(s) between the
14 periods described in this complaint.” ECF No. 30 at 7–8. Again, Plaintiff makes no
15 assertion that he specifically requested mental health treatment for his behavior
16 that resulted in broken ribs or his difficulties with cellmates, or that identified
17 Defendants denied him such treatment. Plaintiff’s general allegations that the
18 failure to effectively treat his bipolar condition contributed to his social problems
19 is insufficient to show deliberate indifference to his serious mental health needs.

20 Plaintiff states that on March 3, 2020, after Plaintiff sent Defendant
21 Armstrong a “health care kite” asking her to take him off “oxcarbazepine because
22 it made [him] ‘very aggressive and has increased [his] anger emotion – though not
23 now [he is] off from taking it causes [him] harm to other and possibly [him]self,”
24 she discontinued the drug. ECF No. 30 at 8. Apparently, this drug was prescribed
25 to “benefit” nerve damage in Plaintiff’s legs. *Id.* Plaintiff complains that Defendant
26 Armstrong “never scheduled any immediate appointment for months later.” *Id.*
27 Since Plaintiff indicated on his kite that his aggression subsided with his own
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1 discontinuation of the medication and Defendant Armstrong discontinued it at his
2 request, the Court cannot infer from the facts presented that Defendant Armstrong
3 was deliberately indifferent to Plaintiff's serious medical/mental health needs in
4 March 2020, more than two months after Plaintiff had filed his initial complaint in
5 this action.

6 Plaintiff avers that on September 9, 2019, he had requested an appointment
7 with another doctor to "follow up" concerning his "bipolar and manic depression."
8 ECF No. 30 at 8. He complains that fourteen days later, a "MSW Psych Associate"
9 advised Plaintiff that his message had been forwarded to his therapist to address.

10 *Id.* Plaintiff states, "Plaintiff was not seen as a result of this submission of a
11 'Health Service KITE'. By Defendant or any one else." ECF No. 30 at 8. However,
12 Plaintiff makes no allegation that the kite was addressed to or reviewed by either of
13 the named Defendants. The Court cannot infer from these assertions that either
14 Defendant was deliberately indifferent to his serious medical needs in September
15 2019.

16 Plaintiff states that in a Level III response to a grievance he filed against
17 Defendant Armstrong regarding his bipolar issue he was advised on October 29,
18 2019, that "appropriate care is being provided per patient care protocols." ECF No.
19 30 at 8. Although granted numerous opportunities to amend, Plaintiff has failed to
20 present facts supporting a claim of deliberate indifference to his serious medical
21 needs.

22 Plaintiff asserts that on June 10, 2020, nearly six months after he filed this
23 action, Defendant Armstrong prescribed antipsychotic medications that caused
24 unspecified "dangerous side effects." ECF No. 30 at 9. Plaintiff claims that she
25 falsely accused Plaintiff of requesting a particular medication to treat his bipolar
26 condition and then allegedly blamed Plaintiff for not treating him. *Id.* These bald
27 accusations, without supporting facts, do not state a claim of deliberate
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1 indifference to a serious medical need.

2 Plaintiff challenges the limited time that Defendant Armstrong has
3 interviewed him, which he estimates at four hours. ECF No. 30 at 9. He complains
4 that she has conducted “no testing to draw her non-treatment and treatment based
5 on her diagnosis and prescribing medications.” *Id.* Plaintiff identifies no testing
6 that is medically necessary. Plaintiff’s allegations are insufficient to show
7 deliberate indifference to a serious medical need.

8 Plaintiff asserts that on July 20 of an unspecified year, a fellow prisoner died
9 while they were practicing their “Native American Sweat-Lodge religion.” ECF
10 No. 30 at 10. Plaintiff indicates that two days after the incident, he requested “a
11 medical emergency [sic]” and was seen by a mental health counselor. *Id.* Plaintiff
12 contends, that although he has asked to see his medical provider, Defendant
13 Armstrong, on an emergency basis, she had not “correct[ed] his present medication
14 treatment,” as of the date he filed his Second Amended Complaint. *Id.*

15 Plaintiff indicates that when he declared a mental health emergency, he was
16 seen by a mental health counselor. If he required follow-up care for his grief and
17 anxiety, then he should appropriately seek such care. Plaintiff’s conclusory
18 assertion that “Defendant’s [sic] ARMSTRON’S [sic] lack of care to plaintiff
19 Binfords [sic] serious medical need is gross negligence amounts to deliberate
20 indifference to Plaintiff’s serious medical needs,” without supporting factual
21 allegations, is insufficient to state an Eighth Amendment claim against Defendant
22 Armstrong. *See Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007).

23 In Count II, Plaintiff claims that Defendants Armstrong and RN Shawn
24 Gannon violated his Eighth and Fourteenth Amendment rights by cancelling a
25 medication for a non-medical reason. ECF No. 30 at 17. Plaintiff asserts that on
26 August 9, 2019, he was placed in administrative segregation for 47 days. He states
27 that on August 10, 2019, he requested a nighttime dose of Clonidine to alleviate his
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1 “symptoms.” ECF No. 30 at 11.

2 Plaintiff’s general reference to all the symptoms he had previously described
3 throughout his Second Amended Complaint is insufficient to show that the
4 symptoms he experienced in August 2019 were a serious medical need. *Id.* at 11.
5 Plaintiff states that he told Defendant Gannon that he needed the Clonidine for
6 “anxiety and depression problems.” *Id.* at 12.

7 To establish a violation of the Eighth Amendment, Plaintiff must allege facts
8 showing a “serious medical need,” and that Defendants’ response to the need was
9 deliberately indifferent. *Jett v. Penner*, 439 F.3d 1091, 1096 (9th Cir. 2006). A
10 serious medical need exists if the failure to treat could result in further significant
11 injury or the “unnecessary and wanton infliction of pain.” *Estelle v. Gamble*, 429
12 U.S. 97, 104 (1976). A difference of opinion over proper medical treatment does
13 not constitute deliberate indifference. *Sanchez v. Vild*, 891 F.2d 240, 242 (9th Cir.
14 1989). To establish deliberate indifference, a plaintiff must show a purposeful act
15 or failure to act on the part of the defendant and resulting harm. *See Shapley v.*
16 *Nevada Bd. of State Prison Comm’rs*, 766 F.2d 404, 407 (9th Cir. 1985). Plaintiff’s
17 conclusory allegations are insufficient to show deliberate indifference to a serious
18 medical need.

19 Plaintiff complains that when Defendant Gannon came to his door on
20 August 10, 2019, he stated, “Did you stay up all night just to get me over here[?] I
21 am going to talk to the provider to discontinue the meds because we don’t run a
22 regular pill line at this time.” ECF No. 30 at 11. Plaintiff counters that the pill line
23 in the Intensive Management Unit did run on an “as needed” basis, but Defendant
24 Gannon did not want to bring Plaintiff his medication during the night. *Id.* at 12.
25 Plaintiff asserts that Defendant Gannon had no authority to seek its discontinuation
26 but told the booth officer to inform Plaintiff that a nighttime dose “was canceled.”
27 *Id.* Plaintiff claims that a daytime pill line nurse told Plaintiff that it was not
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1 canceled. *Id.*

2 Plaintiff states that on a Health Services Kite dated August 13, 2019,
3 Defendant Armstrong advised: “I have discontinued you[r] clonidine 0.2mg at
4 bedtime due to the needs of the facility and the fact pill line does not occur on an
5 as [n]eeded basis. Additionally, I have reviewed the evidence regarding taking
6 clonidine on an as needed basis and cannot continue prescribing this to you in this
7 manner. Hypertension, and consequently cardiac issues. I HAVE INFORMED
8 SCHEDULING YOU RESIDED IN IMU_N at this time and have requested you
9 be seen by a psychiatric perscriber [sic], as IMU-N and IMU-S are not areas of the
10 prison I provide coverage. Should you have further questions feel free to send me a
11 kite.” *Id.*

12 Plaintiff states that on November 8, 2019, Defendant Armstrong wrote, “. . .
13 I have changed the bedtime clonidine dose to 0.2mg, as I am aware you have
14 previously been taking an additional 0.2mg of clonidine in your cell in the middle
15 of the night . . .” *Id.* at 12. Plaintiff claims that this contradicted Defendant
16 Armstrong’s reasoning for discontinuing the “as needed” nighttime dose of
17 Clonidine because it could cause “cardiac issues and rebound hypertension.” *Id.*
18 Plaintiff states that he has not had any mental health appointments with Defendant
19 Armstrong since August 13, 2019. *Id.* Plaintiff does not state what harm resulted
20 from the temporary suspension of Clonidine in August 2019.

21 Plaintiff avers that Dr. Grubb saw him on August 21, 2019, prescribed
22 “Kolonpin” for 7 days as treatment for his “bipolar I Disorder,” but “the order was
23 canceled [sic] days into the treatment . . .” ECF No. 30 at 12. Elsewhere, Plaintiff
24 indicates that Dr. Grubb “came and [went] in the week of August, 2019[.]” *Id.* at
25 14.

26 Plaintiff contends that “Defendant Armstrong is the only provider that had
27 the authority at WSP to cancel the order or to be consulted if the order for
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1 medication was not in stock.” *Id.* Plaintiff states a belief that “the out of stock for
2 medication provided by the daytime escorting pill line was false information.
3 Medical protocol and common sense say this is not the case.” Plaintiff has not
4 clearly asserted a claim for relief. His beliefs and speculations regarding the
5 availability of a particular drug do not state a viable claim for relief. Plaintiff does
6 not identify the harm caused from the discontinuation of “Kolonpin” and his general
7 reference to prior numbered paragraphs in his Second Amended Complaint does
8 not support a claim of present harm.

9 Plaintiff asserts that when he was told the “Klonipin⁴” was discontinued, he
10 was also told that there was no provider in his administrative segregation unit. ECF
11 No. 30 at 14. He avers that he filed a grievance that the grievance coordinator
12 rejected three days later. *Id.* He does not state the content of the grievance or the
13 response. The Court can infer no constitutional violation from the facts presented.

14 Although granted numerous opportunities to do so, Plaintiff has failed to
15 present facts from which the Court could infer that either Defendant Gannon or
16 Defendant Armstrong acted with deliberate indifference to his serious medical
17 needs. A difference in medical judgment regarding the discontinuation of an “as
18 needed” nighttime dose of Clonidine, even if based on non-medical concerns of the
19 facility and without any resulting harm, does not show deliberate indifference to a
20 serious medical need.

21 Plaintiff identifies no ill effects from the temporary suspension of Clonidine.
22 He presents no facts showing that Defendant Armstrong denied him treatment for
23 any specific suicidal ideations that he reported to her. Furthermore, Plaintiff’s
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25 ⁴ Plaintiff uses various spellings of “Klonipin,” “Klonapin” and “Kolonpin” in
26 reference to the drug Dr. Grubb prescribed on August 21, 2019. ECF No. 30 at 13–
27 14.
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1 speculation about a drug he was informed was “not in stock” does not support a
2 constitutional claim. Plaintiff’s bare allegations against the named Defendants are
3 insufficient to state a claim for deliberate indifference. *See Farmer v. Brennan*, 511
4 U.S. 825, 837 (1994) (holding that a prison official is deliberately indifferent if he
5 or she knows that a prisoner faces a substantial risk of serious harm and disregards
6 that risk by failing to take reasonable steps to abate it).

7 Although granted the opportunity to do so, Plaintiff has failed to present
8 facts showing that Defendants Armstrong and Gannon denied him treatment for the
9 health effects he reported to them, evidencing deliberate indifference to his serious
10 mental health needs. He has alleged no facts showing what harm resulted to his
11 health that was not otherwise subsequently addressed.

12 Therefore, **IT IS HEREBY ORDERED** this action is **DISMISSED** with
13 prejudice for failure to state a claim against identified Defendants upon which
14 relief may be granted. 28 U.S. C. §§ 1915(e)(2) and 1915A(b)(1).

15 Pursuant to 28 U.S.C. § 1915(g), enacted April 26, 1996, a prisoner who
16 brings three or more civil actions or appeals which are dismissed as frivolous or for
17 failure to state a claim will be precluded from bringing any other civil action or
18 appeal *in forma pauperis* “unless the prisoner is under imminent danger of serious
19 physical injury.” 28 U.S.C. § 1915(g). Plaintiff is advised to read the statutory
20 provisions under 28 U.S.C. § 1915. This dismissal of Plaintiff’s complaint may
21 count as one of the three dismissals allowed by 28 U.S.C. § 1915(g) and may
22 adversely affect his ability to file future claims.

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1 **IT IS SO ORDERED.** The Clerk of Court is directed to enter this Order,
2 enter judgment, provide copies to Plaintiff at his last known address, and **close** the
3 file. The Clerk of Court is directed to forward a copy of this Order to the Office of
4 the Attorney General of Washington, Corrections Division. The Court certifies any
5 appeal of this dismissal would not be taken in good faith.

6 **DATED** this 23rd day of August 2021



10 *Stanley A. Bastian*

11 Stanley A. Bastian
12 Chief United States District Judge
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